IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

PHILLIP A. VAVRO,)
Plaintiff,) 2:05cv321
) Electronic Filing
v.)
) Judge David S. Cercone
A.K.STEEL CO.; UNIVERSITY OF) Magistrate Judge Lisa Pupo Lenihan
MICHIGAN; UNIVERSITY OF MICHIGAN	
SCHOOL OF MEDICINE; JAMES W.) (Doc. No. 24)
ALBERS; STANLEY BERENT;	
RAILROAD OCCUPATIONAL INTRA-)
INDUSTRY CLAIMS ORGANIZATION;)
JOHN AND MARY DOES 1-100; DOE)
CORPORATIONS; PARTNERSHIPS OR)
OTHER ENTITIES 1-100,)
)
Defendants.)

ORDER

Plaintiff's Complaint was received by the Clerk of Court on March 10, 2005, and was referred to United States Magistrate Judge Lisa Pupo Lenihan for pretrial proceedings in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The magistrate judge's report and recommendation, filed on October 27, 2005, recommended that Defendants' Joint Motion to Dismiss the Second Amended Complaint pursuant to Fed. R. Civ. P. 12(b)(1) (Doc. No. 24) be granted and that the Second Amended Complaint be dismissed without prejudice for lack of subject matter jurisdiction. It further recommended that Plaintiff be granted leave to file a Third Amended Complaint setting forth all necessary facts to establish complete diversity jurisdiction within twenty (20) days of the date of the District Court's

Order. If no such amended complaint is filed, the report and recommendation recommended that the District Court enter an order dismissing the case and directing the Clerk of Court to mark the case closed. It further recommended that Defendants' Joint Motion to Dismiss pursuant to Rule 12(b)(6) be denied without prejudice, and that Defendants be allowed to renew said motion when Plaintiff files a timely amended complaint.

Service was made on all counsel of record.¹ No objections to the report and recommendation were filed. After review of the pleadings and documents in the case, together with the report and recommendation, the following order is entered:

IT IS HEREBY ORDERED that Defendants' Joint Motion to Dismiss the Second Amended Complaint pursuant to Fed. R. Civ. P. 12(b)(1) (Doc. No. 24) is **GRANTED** and the Second Amended Complaint is dismissed without prejudice for lack of subject matter jurisdiction.

IT IS FURTHER ORDERED that Plaintiff is granted leave to file a Third Amended Complaint setting forth all necessary facts to establish complete diversity jurisdiction within twenty (20) days of the date of this Order. All responses to the Third Amended Complaint shall be filed within twenty (20) days of the date of service of said complaint. If Plaintiff fails to file such amended complaint by the deadline, the Court will *sua sponte* enter an order dismissing the case and directing the Clerk of Court to mark the case closed.

IT IS FURTHER ORDERED that Defendants' Joint Motion to Dismiss pursuant to Rule 12(b)(6) is **DENIED** without prejudice.

¹Service was made on James Israel at the address of record with the Court. However, the mailed copy was returned to the court with the notation "undeliverable as addressed." Attempts to contact Mr. Israel by telephone were also unsuccessful.

IT IS FURTHER ORDERED that the Report and Recommendation of Magistrate

Judge Lenihan, dated October 27, 2005, is adopted as the opinion of the court.

BY THE COURT:

DAVID STEWART CERCONE United States District Judge

cc: Honorable Lisa Pupo Lenihan United States Magistrate Judge

> George Chada, Esquire Workplace Exposure Group 221 Summit Ave. Natrona Heights, PA 15065-9710

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